IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

OP.No. 22403 of 2002(P)

PETITIONER:

C.JAGADAMMA, D/O.CHINNAMMA,
AGED 70 YEARS, RADHAVILASOM BUNGLOW, CHALAI,
TRIVANDRUM.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE
DISTRICT COLLECTOR, COLLECTORATE, TRIVANDRUM

2. THE SPECIAL LAND ACQUISITION OFFICER,
P.W.D.(SOUTH CIRCLE), TRIVANDRUM.

3. PADMANABHAYYAR HARIHARAYYAR,
PARVATHYPURAM GRAMOM, KARAMANA, TRIVANDRUM

4. THE CITY CORPORATION OF TRIVANDRUM,
REPRESENTED BY ITS COMMISSIONER.

BY ADV. SRI.N.NANDAKUMARA MENON,SC,TVM CORPN.
GOVT. PLEADER SRI.L.G. SURESH BABU FOR R1 & R2

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 18-06-2007 THE COURT ON 18/06/2007 DELIVERED THE FOLLOWING:

O.P. 22403 OF 2002

ORDER IN C.M.P. 38374 OF 2002 IN O.P. NO. 22403 OF 2002

DISMISSED

18-06-2007 SD/- K.PADMANABHAN NAIR, JUDGE

APPENDIX

Ext.P1: True copy of the Sale deed dated 12-12-1960

Ext.P2: True copy of the Basic Tax receipt dated 29-8-1997

Ext.P3: True copy of the judgment inLAR 16/1992 dated 21-9-1995 of the Iind Addl. Sub-Court, Trivandrum

//True copy//

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K.PADMANABHAN NAIR . J.

O.P No. 22403 of 2002

Dated this the 18th day of June 2007

JUDGMENT

The main prayer in the original petition is to quash the judgment passed by the Sub-court Trivandrum in LAR 16/92 and also the award in LAC 116/1989 which was the subject matter in LAR 16/1992. The petitioner purchased 14 cents in Survey No.1281, 1.130 cents in Survey No.1281 and 7 cents in Sy.No. 1287 of Iranimuttom Village . The subsequent case of the petitioner is that she purchased the said properties from Sri.A. Rajangam Iyyankar as per sale deed No. 4491 of 1960 dated 12-12-1960. (Ext.P1) It is further averred that the 14 cents of land which was comprised in Survey No. 1281 was acquired for widening the Killipalam road. But the award passed only for 96 M^2 and compensation of Rs. 1,02,118.38 and it was granted to respondent 3 & 4. They did not receive the amount. So the amount was sent to the Sub-court Trivandrum under Section 31 (2) of the Land Acquisition Act. For deciding the question of compensation, the 3rd and 4th respondents did not appear to contest the matter though notice was issued. So the LAR was closed on 21-9-1995. According to the petitioner she was unaware of all these developments. It is averred that her husband was laid up from 1994 and ultimately he died in 1998. She came to know about the pendency of the case only when her advocate Sri.K.B.Pandarathil who is

conducting other cases for herself came to know about the pendency of the LAR. Hence this original petition.

2. This original petition is to quash the judgment in the LAR as well as in the LAC. The 2nd respondent has filed a statement admitting acquisition of an area of 1.465 acres of land in Iranimuttom Village for forming a bye-pass road to Chalai Bazar from Killipalam junction to Attakulangara. It is also submitted that 2.835 cents of land comes within Sy.No.1281 of Iranimuttom Village along with some other lands which stood registered in the names of Sri. Gopala Iyer Padmanabha Iyer and Sri.G.Harihara Iyer, Parvathipuram Gramam, Karamana as per Thandaper Nos. 3569 and 3568 of Iranimuttom Village. It is also submitted that as per the survey sketches approved by the Superintendent only an extent of 96 Sq. meters was acquired for the above works and assigned new sub division number as 1281/2 and the said land was then in the possession and enjoyment of the Thiruvananthapuram City Corporation. It is also contended that the City corporation claimed title over 2.835 cents of land and the claimant has not produced any documentary evidence to prove title over the property and the compensation amount was deposited in the Sub-Court, Trivandrum. It is further contended that neither pattadar nor the occupier did not produce any document to prove title over the lands under acquisition the entire amount of compensation was deposited in the Sub- Court Trivandrum under Section 31(2) of the L.A. Act.

3. Sri.G.S. Raghunath learned counsel appearing for the petitioner made available a copy of the sale deed executed by Gopalakrishna Iyen and Sankara Iyen in favour of Sri.Rajankam Iyyankar That document shows that the properties originally belonged to the family of the executant and on a partition effected in the year 1115 this property was allotted to the share of Harihara Iyer and he was the owner of that property. It is admitted by the respondents that Harihara Iyer was the pattadar and hence notice was issued to Padmanabha Iyer Harihara Iyer. It is submitted by the counsel for the petitioner that evidence on record shows that the Padmanabha Iyer Harihara Iyer died long back and the Rajankam Iyenkkar who purchased the properties on 7-9-1950 and from that date onwards Rajankam Iyyenkar was in possession of the property. The said Rajankam Iyyenkar sold the properties to the petitioner on 12-12-1960. It is very unfortunate that the land acquisition authorities issued notice to the person who was dead some years back without giving notice to the real owner of the property. Ext. P2 True copy of the Basic Tax Receipt shows the name of the petitioner as pattadar. . It is admitted that she is now the pattadar. So the reference made by the land acquisition officer without due notice to the petitioner who was the real owner of the property at the date of the acquisition is illegal. But considering the passage of time I am of the view that instead of quashing the award passed by the land acquisition officer, I direct him to pass a fresh award. I

am of the view that justice will be served by quashing the judgment rendered by the Sub-judge in LAR 16/1992 and gave permission to the petitioner to file a petition to implead herself in the L.A.R There is a further direction to the sub-judge to dispose of the LAR after considering the case put forward by the petitioner if such case is permissible as can be seen from **UP Awas Evam Vikas Parishad Vs Gyan Devi (1995 SC 724)**

4. In the result, this original petition is allowed in part. The judgment passed by the Subordinate judge Trivandrum in LAR 16/1992 is hereby set aside. The learned Sub-judge is directed to take back LAR 16/1992 back to file. It is open to the petitioner to file a petition to get herself implead in the land acquisition proceedings in the reference Court. If such a request is made th Sub-judge should allow that application and dispose of the LAR on merits after considering the contentions raised by the petitioner in accordance with law . There is a further direction to the Sub-judge to dispose of the LAR as expeditiously as possible, at any rate, within 3 months from the date of receipt of a copy of this judgment.

K.PADMANABHAN NAIR,JUDGE

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